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*Noteholders of Pacific Gas and Electric Company*

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION,**

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

Bankruptcy Case

No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

AD HOC COMMITTEE'S JOINDER TO OFFICIAL COMMITTEE'S LIMITED OBJECTION TO CLAIMS  
PROCEDURES

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

*\*All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

**JOINDER OF THE AD HOC COMMITTEE  
OF SENIOR UNSECURED  
NOTEHOLDERS TO LIMITED  
OBJECTION OF THE OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS TO MOTION OF DEBTORS  
PURSUANT TO 11 U.S.C. §§ 105(A) AND  
362 FOR INTERIM AND FINAL ORDERS  
ESTABLISHING NOTIFICATION  
PROCEDURES AND APPROVING  
RESTRICTIONS ON CERTAIN  
TRANSFERS OF STOCK OF, AND CLAIMS  
AGAINST, THE DEBTOR**

**Hearing**

Date: February 27, 2019

Time: 9:30 a.m. (Pacific time)

Place: Courtroom 17

450 Golden Gate Ave, 16th Floor  
San Francisco, CA 9410

The Ad Hoc Committee of Senior Unsecured Noteholders of Pacific Gas and Electric Company (the “Ad Hoc Committee”) in the above-captioned chapter 11 cases of Pacific Gas and Electric Company (the “Utility”) and PG&E Corporation (“PG&E” and, together with the Utility, the “Debtors”), by its undersigned counsel, Akin Gump Strauss Hauer & Feld LLP, hereby joins in the limited objection of the Official Committee of Unsecured Creditors [Dkt. No. 613] (the “Creditors’ Committee Objection”) to the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 362 for Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Stock of, and Claims Against, the Debtors* [Dkt. No. 10] (the “Motion”) <sup>1</sup>. In support hereof, the Ad Hoc Committee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. Through the Motion, the Debtors seek relief that is both premature and advisory in nature and therefore should be denied. Specifically, the Debtors ask this Court to approve at the outset of these chapter 11 cases a set of Claims Procedures that, among other things, contemplate (i) a hypothetical process for gathering information on Claims traded and the parties trading during the pendency of these chapter 11 cases, and (ii) a separate set of hypothetical procedures for requiring sell-

<sup>1</sup> Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Motion.

1 down of Claims, *while acknowledging that such Claims Procedures may never be necessary.*

2 Imposing the potentially unnecessary Claims Procedures could have enormous consequences on  
3 holders of Claims – rendering marketplace trades void *ab initio* and imposing sanctions on creditors.  
4 The substantial adverse impact that entry of an order approving the Claims Procedures would have on  
5 trading of Claims today – especially if the substantive relief is never needed – makes plain that the  
6 Court should not approve the Motion as it relates to the Claims Procedures at this time.

7         2.       The Motion makes clear that the requested relief is entirely advisory: the Debtors seek  
8 the imposition of Claims Procedures that will govern future action if, and only if, one possible course,  
9 among many, becomes available to the Debtors and is ultimately chosen by the requisite creditor  
10 constituencies. The Debtors acknowledge that the Claims Procedures will be called upon only if a plan  
11 that utilizes Section 382(l)(5) of the Internal Revenue Code (a “382(l)(5) Plan”) is pursued. However,  
12 this will happen only if the value of the Debtors’ Tax Attributes warrants use of, and the Debtors can  
13 satisfy the requirements of, a 382(l)(5) Plan. And the Debtors further acknowledge that the purported  
14 benefit of the Tax Attributes has not been determined, or even examined, and that they have no idea  
15 what a plan of reorganization in these cases may look like. Under existing Ninth Circuit precedent,  
16 given all the hypotheticals upon which the requested relief is built, the Court should refrain from  
17 granting the Debtors’ request for an advisory opinion.

18         3.       The only real purpose of the Motion that is relevant to the Debtors at this time is to give  
19 notice to creditors that circumstances may arise in the future where relief of the type suggested by the  
20 Motion may be required. That notice has been given by virtue of filing the Motion. As this Court  
21 noted in connection with its *Tentative Ruling on Valero Refining Motion for Relief From Stay*, these  
22 cases are truly in their infancy and all parties in interest need time to determine the best path forward.  
23 *In re PG&E Corp., et al.*, No. 19-30088 (DM) (Bankr N.D. Cal. Feb. 23, 2019). While relief similar to  
24 that requested here may be appropriate in the future depending on the course of these chapter 11 cases  
25 and ultimate plan negotiations, and following analysis of the benefits and burdens of imposing the  
26 restrictions reflected in the Claims Procedures, it is premature to grant relief now based on hypothetical  
27

28 AD HOC COMMITTEE’S JOINDER TO OFFICIAL COMMITTEE’S LIMITED OBJECTION TO CLAIMS  
PROCEDURES

1 contingencies that may never materialize. Based on the lack of need for the relief today, the Ad Hoc  
2 Committee hereby fully joins in the Creditors' Committee Objection.

3 **JOINDER**

4 4. The Ad Hoc Committee joins the Creditors' Committee Objection and agrees that the  
5 requested relief is entirely advisory and premature in the context of the current facts and circumstances  
6 of these chapter 11 cases. When compared against the risk and harm to the Claims-trading markets  
7 and holders of Claims from entry of the Proposed Final Order, the Debtors cannot meet their burden of  
8 demonstrating that the Motion presents a concrete factual situation requiring immediate relief.

9 5. As more fully set forth in the Creditors' Committee Objection, the requested relief  
10 clearly requires the Court to render an advisory opinion regarding the appropriateness of restricting the  
11 trading of Claims in the face of an entirely hypothetical scenario. Federal courts, including bankruptcy  
12 courts, are barred from giving "an opinion advising what the law would be upon a hypothetical state of  
13 facts." *In re Cubic Energy, Inc.*, 587 B.R. 849, 855 (Bankr. D. Del. 2018); *see also In re Lazy Days'*  
14 *RV Ctr. Inc.*, 724 F.3d 418, 421 (3d Cir. 2013) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013))  
15 (internal quotations omitted); *In Re Dumont*, 581 F.3d 1104, 1112, n.14 (9th Cir. 2009) ("[I]t is a rule  
16 of long standing that federal courts may not issue advisory opinions."). "Ripeness is an Article III  
17 doctrine designed to ensure that courts adjudicate lives cases or controversies and do not 'issue  
18 advisory opinions [or] declare rights in hypothetical cases.'" *Bishop Paiute Tribe v. Inyo County*, 863  
19 F.3d 1144, 1153 (9th Cir. 2017) (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134,  
20 1138 (9th Cir. 1990)). The Court is clearly presented here with a request to issue an advisory opinion  
21 and should refrain from doing so.

22 6. Even if the Motion were based upon more than speculation, the requested relief is not  
23 narrowly tailored to the Debtors' needs, especially given that their needs are entirely unknown at this  
24 time. Any order intended to protect a debtor's future tax benefits through the imposition of restrictions  
25 on the ability of the holders of claims and interests to transfer their claims or interests must be  
26 reasonable and narrowly tailored to achieve that underlying objective. *See* 15 Collier on Bankruptcy §  
27 18.91[1]. An order that unnecessarily impairs the rights of claimholders to engage in the securities

1 market and realize upon their investment is improper. *See, e.g., In re UAL Corporation*, 412 F.3d 775,  
2 778 (7th Cir. 2005) (“Requiring investors to bear the costs of illiquidity and underdiversification [is]  
3 both imprudent and unnecessary.”). Given the uncertain nature of the connection between the  
4 claimholders’ exercise of their rights to freely trade Claims and the preservation of the Debtors’  
5 hypothetical ability to use the Tax Attributes in a hypothetical plan of reorganization, the Debtors have  
6 failed to establish at this time any foundation for applying the automatic stay to restricting the  
7 claimholders from exercising their rights.

8 7. The requested relief not only directly impairs the rights and interests of the  
9 claimholders, it also threatens market liquidity. If ordered, the Claims Procedures may also create  
10 general market uncertainty, as the Claims Procedures grant the Debtors the right to seek a Court order  
11 to void sales or transfers of all or a portion of a claimholder’s beneficial ownership of Claims. There is  
12 a significant risk that the Claims Procedures outlined in the Proposed Final Order will chill the market  
13 with no corresponding benefit to the Debtors.

#### 14 **CONCLUSION**

15 8. For the reasons set forth herein and those set forth in the Creditors’ Committee  
16 Objection, the Ad Hoc Committee joins in the Creditors’ Committee Objection and respectfully  
17 requests that the Court deny the Motion as it relates to the Claims Procedures at this time.

18  
19 Dated: February 24, 2019

**AKIN GUMP STRAUSS HAUER & FELD LLP**

20 By: /s/ Ashley Vinson Crawford

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